

<b>Maricopa County Environmental Services Department Policy and Procedure</b>	DPPN: 10-97-06 ES* Page 1 of 4	Last Review 4/97
	APPROVED BY -	
Initiating Department: Business Services Division		Issue Date 4/4/97
Subject: Air Quality Violation Reporting and Enforcement Procedure		Next Review 4/99

## I. PURPOSE

The purpose of this policy is to provide a consistent process for documenting air quality violations, notifying violators, and initiating enforcement action to ensure that violations are corrected in a timely and appropriately manner.

## II. REFERENCE

Arizona Revised Statutes, Title 49, and Maricopa County Air Pollution Control Regulations.

## III. APPLICABILITY

All Environmental Services Department personnel.

## IV. PROCEDURE

- A. When a violation is discovered while conducting an inspection or investigating a complaint, document all relevant details and information as soon as possible (i.e., who, what, why, when, where, etc.) on the inspection or complaint investigation form. It is critical that proper documentation commence at this point to ensure comprehensive accurate information is recorded. This data will create the foundation of any future enforcement action which may result in a hearing or court proceeding. Enforcement will prepare all documents required pursuant to A.R.S. 49-488 to obtain a Special Inspection Warrant when entry for inspection purposes has been refused.
- B. Air Quality Division staff must properly notify an owner and/or operator that a violation was discovered. Notification of an air quality violation to an owner and/or operator shall be a written warning using the Notice of Violation form, except authorized staff may issue a Notice to Appear-Complaint for truck tarp violations. A separate Notice of Violation form shall be completed for each Permit Condition, Rule Section, or Rule Subsection violation discovered at the same facility.
- C. A follow up inspection shall be conducted by Field Services Division staff within a reasonable time to verify the violation was corrected. If compliance is achieved, complete the Disposition Section of the applicable Notice of Violation form to reflect such compliance and notify all complainants regarding the results. When compliance has not been achieved and the violation continues, issue another Notice of Violation and immediately refer this matter to your Supervisor and Enforcement.

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\*This Policy and Procedure supersedes DPPN 62-91-07 PH, dated December 1, 1991.

D. It is the responsibility of Enforcement to review the file and determine, based on the evidence, if one of the following enforcement actions should be initiated. The file review shall evaluate whether or not any of the following criteria occurred.

- Repeat violations after receiving a written warning.
- Actual harm or a significant potential to harm public health or the environment.
- Evidence of knowing or willful violation of air quality control laws and rules.
- Major deviation from an air quality standard or requirement.

When any of these criteria exist the appropriate enforcement response will seek to recover a penalty in accordance with the Department's Penalty Policy.

1. Order of Abatement

An Order of Abatement may be issued for any violation of the Air Pollution Control Regulations. An Order of Abatement may be issued for a violation that does not involve any of the above criteria.

An Order of Abatement is prepared by Enforcement and must be approved and signed by the Air Pollution Control Officer. Copies of the Order of Abatement will be sent to EPA, ADEQ, Office of the County Attorney, and members of the Air Pollution Control Hearing Board.

Air Quality Division staff shall conduct follow-up inspections to determine compliance or noncompliance with an Order of Abatement and send Enforcement a copy of such follow-up inspection report..

Enforcement will notify all appropriate Department personnel concerning required attendance at hearings conducted by the Air Pollution Control Hearing Board.

2. Notice to Appear - Complaint

A Notice to Appear-Complaint (herein after "Citation") may be filed in Justice Court for violations where the Department's Penalty Policy determines a penalty of less than \$10,000.

Enforcement must review the evidence and approve the issuance of a Citation (except truck tarp violations).

Air Quality Division staff authorized to issue a Citation by Enforcement are responsible for the following:

- Explain to the defendant the nature of the violation and why a Citation will be issued,
- Complete all portions of the Citation and prepare a Department Report which is located at P:\NOV\DUMMY\_DR.DOC. Transfer this file to your U-Drive, do not work on this form on the P-Drive,

- Obtain the defendant's signature and provide them with the pink copy of the Citation, and
- Distribute within two (2) workdays after obtaining the defendant's signature the white and blue copies of the Citation, along with a completed Department Report, to the designated Justice Court. Submit the yellow copy of the Citation and a completed Department Report to Enforcement.

Enforcement is responsible for representing the Department in all pre-trial activities involving a Justice Court or Deputy County Attorney. All Department personnel associated with filing a Citation in Justice Court will be notified of the case status, disposition, and penalty by Enforcement.

### 3. Civil Complaint

A Civil Complaint will be considered for cases where the Department's Penalty Policy determines a penalty greater than \$10,000. All violations discovered more than one year after the infraction occurred must be pursued as a Civil Complaint as the statute of limitation has expired for filing a Citation in Justice Court. Pursuant to Arizona Revised Statute § 49-513, the County Attorney, at the request of the Air Pollution Control Officer, shall file a Civil Complaint in Superior Court to recover civil penalties.

Enforcement will prepare a Draft Disclosure Statement required by Arizona's Rules of Civil Procedure. The Air Pollution Control Officer must approve and send the Draft Disclosure Statement to the County Attorney along with a written request to file a Civil Complaint in Superior Court.

### 4. Additional Enforcement Action

Enforcement may, based on evidence, case history and other pertinent factors, recommend to the Control Officer initiating action pursuant to A.R.S. 49-514 (violations defined by this section are classified as either a Class 1 Misdemeanor, Class 2 Felony, Class 5 Felony, or Class 6 Felony), or A.R.S. 49-512 (Injunctive Relief).

- E. Violations discovered at Major Sources and Synthetic Minor Sources will be entered and tracked in the AIRS database by Field Services Division staff, and such violations shall be resolved in accordance with the most current EPA "Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators".
- F. Enforcement will assess Asbestos NESHAP violations by following the criteria set forth in the most current EPA "Asbestos Demolition and Renovation Civil Penalty Policy". Penalties will be calculated by using the "Arizona Asbestos NESHAP Civil Penalty Policy Computation Worksheet" developed by ADEQ and approved by EPA.
- G. Enforcement will utilize the "Maricopa County Air Pollution Control Penalty Policy" to calculate appropriate penalties for both Criminal and Civil Complaints, except Asbestos NESHAP violations.

- H. The Department will emphasize Environmental Community Action Projects to supplement fines or penalties in judicial settlement proceedings. Such projects will not be appropriate to replace the economic benefit portion of a penalty. Cities and environmental organizations will be contacted to solicit ideas for projects. When applicable, the “EPA Supplemental Environmental Projects Policy”, effective May 1, 1998, may be included in the settlement to further Department goals to protect and enhance public health and the environment.

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